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GNTX-00100

#3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:  
Robert J. Christy

Serial No. 09/879,746

Filed: June 11, 2001

For: Detection of Estrogen Receptor- $\beta$   
and Methods for Diagnosis and Classification  
of Cancer

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OFFICE OF PETITIONS

Atty. Dkt. No.: GNTX-00100

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as First Class Mail with sufficient postage in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231, on the date below:

121.02

Rugetta McDaniel  
Signature

DECLARATION OF FACTS IN SUPPORT OF FILING ON  
BEHALF OF UNWILLING INVENTOR UNDER C.F.R. §1.47(a)

Assistant Commissioner  
for Patents  
Washington, D.C. 20231

Sir/Madam:

This Declaration is made as to the pertinent facts that are relied upon to establish a diligent effort made to secure the execution of an Inventors' Declaration by an unwilling inventor for the above-identified patent application before deposit thereof in the Patent and Trademark Office.

This Declaration is being made by the undersigned, having first-hand knowledge of the facts recited therein.

I, C. Steven McDaniel, do hereby declare that:

1. I am a registered patent attorney commissioned on behalf of GeneTex, Inc., to procure filing of the captioned matter before the U.S. Patent and Trademark Office.
2. A patent application was prepared for the captioned matter, the technical substance and scope of which was approved by each of the present joint inventors.

3. The Inventors' Declaration and Assignment papers were forwarded to joint inventor Suzanne Fuqua at her last known address at 5410 Drakeview Court, Sugar Land, Texas 77479.

4. Dr. Fuqua has presently refused to sign the Inventors' Declaration and Assignment papers which were forwarded to her at her last known address, along with the finalized specification, claims, and drawings. Based on information and belief, see attached Exhibit "A" from Robert Christy, the Inventors' Declaration was forwarded via regular mail during the month of August 2001.

5. The undersigned has tried to obtain the signature of Dr. Fuqua by negotiations with her representative at Baylor College of Medicine (Mr. Stewart Davis). While negotiations are still ongoing and will hopefully conclude in her signing, the other joint inventors have chosen to go forward without concluding those negotiations at present.

6. Further, I declare not.

Respectfully submitted,

**McDaniel & Associates**

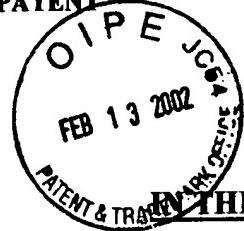


DATE: 1-21-02

**C. Steven McDaniel**  
Registration No. 33,962  
ATTORNEY FOR APPLICANT

McDaniel & Associates, P.C.  
P.O. Box 2244  
Austin, Texas 78768-2244  
Phone: 512.472.8282  
Fax: 512.472.8181

PATENT



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GNTX-00100

Exhibit "A"

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: §      Atty. Dkt. No.: GNTX-00100  
Robert J. Christy      §  
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Serial No. 09/879,746      §  
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Filed: June 11, 2001      §  
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For: Detection of Estrogen Receptor-β      §  
and Methods for Diagnosis and Classification      §  
of Cancer      §  
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**DECLARATION OF ROBERT CHRISTY IN SUPPORT OF  
THE DECLARATION OF FACTS IN SUPPORT OF FILING ON  
BEHALF OF UNWILLING INVENTOR UNDER C.F.R. §1.47(a)**

I, Robert J. Christy, do hereby declare that:

1. I am over the age of 18, have not been convicted of a felony, and all of the matters contained herein are based on my personal knowledge.
2. A am a Joint Inventor of the above-referenced patent application. During the month of August 2001, I forwarded the Inventors' Declaration and Assignment papers to joint inventor Suzanne Fuqua at 5410 Drakeview Court, Sugar Land, Texas 77479.
3. It is my personal knowledge that Dr. Fuqua has presently refused to sign the Inventors' Declaration and Assignment papers which were forwarded to her at her last known address.

1-21-2002 10:41AM

FROM GENETEX, INC. 210 677 8843

P. 4

JAN-21-2002 MON 08:46 AM

DANIEL AND ASSOCIATES

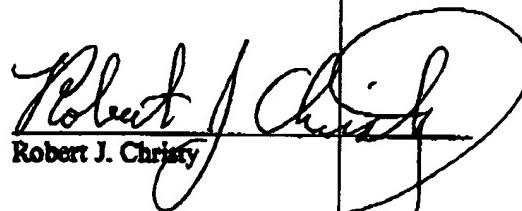
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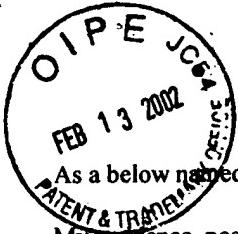
P. 04

PATENT

GNTX-00100

Further affiant sayeth not.

  
Robert J. Christy



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DECLARATION AND POWER OF ATTORNEY

As a below named inventor, I hereby declare that:

My residence, post office and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or the below named inventors believe they are the original, first and joint inventors (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled, "DETECTION OF ESTROGEN RECEPTOR-β AND METHODS FOR DIAGNOSIS AND CLASSIFICATION OF CANCER" the specification of which:

is attached hereto.  
 was filed on June 11, 2001 as Application Serial No. 09/879,746.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose to the Patent and Trademark Office all information known to me to be material to patentability of the subject matter claimed in this application, as "materiality" is defined in Title 37, Code of Federal Regulations, §1.56.

I hereby claim foreign priority benefits under Title 35, United States Code, §119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

PRIOR FOREIGN APPLICATION(S)	Priority <u>Claimed</u>
N/A (Number)	Yes/No (Country) (Date Filed)

I hereby claim the benefit under Title 35, United States Code, §120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, §112, I acknowledge the duty to disclose all information known to me to be material to the patentability of the subject matter claimed in this application, as "materiality" is defined in Title 37, Code of Federal Regulations, §1.56, which become available between the filing date of the prior application and the national or PCT international filing date of this application:

N/A (Application Serial No.)	(Filing Date)	(Status)
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I hereby claim the benefit under title 35, United States code §119(e) of any United States provisional application(s) listed below:

60/211,234 (Application Serial No.)	June 12, 2000 (Filing Date)
--	--------------------------------

The Assignee hereby revokes any previous Powers of Attorney and appoints

C. Steven McDaniel

Reg. No. 33,962

*each of said attorneys or agents being members or associates of the firm of McDaniel & Associates, P.C., as attorney or agent for so long as they remain with such company or firm, with full power of substitution and revocation,*

00100

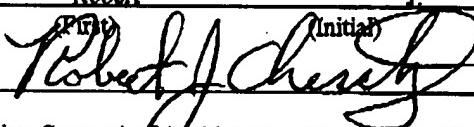
PATENT  
GNTX-

Please direct all communications as follows:

C. Steven McDaniel  
 McDaniel & Associates, P.C.  
 P.O. Box 2244  
 Austin, Texas 78767-2244  
 Ph: 512.472.8282

I hereby declare that all statements made of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

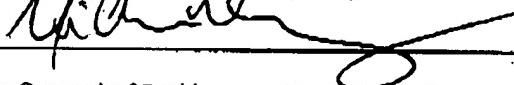
Inventor's Full Name: Robert J. Christy  
 (First) (Initial) (Last)

Inventor's Signature:  Date: 1/18/2002

City and State (or Foreign Country) of Residence: San Antonio, Texas Citizenship: USA

Post Office and Residence Address: 8606 Boutry Heights, San Antonio, Texas 78254  
 (Include number, street name, city, state and zip code)

Inventor's Full Name: Yi-Chun J. Wang  
 (First) (Initial) (Last)

Inventor's Signature:  Date: 1-18-2002

City and State (or Foreign Country) of Residence: San Antonio, Texas Citizenship: USA

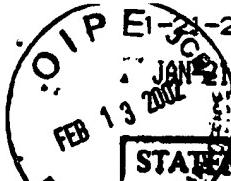
Post Office and Residence Address: 14825 Omicron Drive #201, San Antonio, Texas 78245  
 (Include number, street name, city, state and zip code)

Inventor's Full Name: Suzanne A.W. Fuqua  
 (First) (Initial) (Last)

Inventor's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

City and State (or Foreign Country) of Residence: Sugar Land, Texas Citizenship: USA

Post Office and Residence Address: 5410 Drakeview Court, Sugar Land, Texas 77479  
 (Include number, street name, city, state and zip code)



E1-3-202 10:40AM

FROM GENETEX, INC. 210 677 8843

P. 2

JAN 21 2002 MON 08:45 AM

DANIEL AND ASSOCIATES

512472818

P. 02

**STATEMENT CLAIMING SMALL ENTITY STATUS  
(37 CFR 1.9(i) & 1.27(c)) - SMALL BUSINESS CONCERN**

Docket Number: GNTX-00100

Applicant, Patentee, or Assignee:

Christy, et. al.

Application or Patent No.:

09/879,746

Filed or Issued:

June 11, 2002

Title:

Detection of Estrogen Receptor- $\beta$  and Methods for Diagnosis and Classification of Cancer

I hereby state that I am

- the owner of the small business concern identified below.
- an official of the small business concern empowered to act on behalf of the concern identified below.

NAME OF SMALL BUSINESS CONCERN GeneTex, Inc.ADDRESS OF SMALL BUSINESS CONCERN 14785 Omicron Drive, Suite 101, San Antonio, Texas 78245

I hereby state that the above identified small business concern qualifies as a small business concern as defined in 13 CFR Part 121 for purposes of paying reduced fees to the United States Patent and Trademark Office. Questions related to size standards for a small business concern may be directed to: Small Business Administration, Size Standard Staff, 409 Third Street, SW, Washington, DC 20416.

I hereby state that rights under contract or law have been conveyed to and remain with the small business concern identified above with regard to the invention described in:

- the specification filed herewith with title as listed above.
- the application identified above.
- the patent identified above.

If the rights held by the above identified small business concern are not exclusive, each individual, concern, or organization having rights in the invention must file separate statements as to their status as small entities, and no rights to the invention are held by any person, other than the inventor, who would not qualify as an independent inventor under 37 CFR 1.9(c) if that person made the invention, or by any concern which would not qualify as a small business concern under 37 CFR 1.9(d), or a nonprofit organization under 37 CFR 1.9(e).

Each person, concern or organization having any rights in the invention is listed below:

- No such person, concern or organization exists.
- Each such person, concern or organization is listed below:

GeneTex, Inc.

Individual     Small Business Concern     Nonprofit Organization

Separate statements are required from each named person, concern or organization having rights to the invention stating their status as small entities. (37 CFR 1.27)

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate. (37 CFR 1.28(b))

NAME OF PERSON SIGNING Robert J. ChristyTITLE OF PERSON IF OTHER THAN OWNER Director of ResearchADDRESS OF PERSON SIGNING 14785 Omicron Drive, Suite 101, San Antonio, Texas 78245SIGNATURE Robert J. Christy DATE 1/21/02